

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA CLARK,

Defendant.

Case No. [20-cr-00321-EMC-4](#)

**ORDER DENYING DEFENDANT'S
MOTION FOR BILL OF
PARTICULARS AND MOTIONS TO
SUPPRESS**

Docket Nos. 93-95

For the reasons stated on the record, the Court **DENIES** all three motions brought by Defendant.

As to the Defendant's motion for bill of particulars, the indictment is sufficiently detailed and, taken together with the substantial discovery produced, the three functions of a bill are satisfied. *See United States v. Giese*, 597 F.2d 1170, 1180 (9th Cir. 1979) (stating that functions of a bill are as follows: "'to inform the defendant of the nature of the charge against him with sufficient precision to enable him to prepare for trial, to avoid or minimize the danger of surprise at the time of trial, and to enable him to plead his acquittal or conviction in bar of another prosecution for the same offense when the indictment itself is too vague, and indefinite for such purposes'"); *see also United States v. Long*, 706 F.2d 1044, 1054 (9th Cir. 1983) (stating that a bill of particulars "is designed to apprise the defendant of the specific charges being presented to minimize danger of surprise at trial, to aid in preparation and to protect against double jeopardy").

The motion to suppress Defendant's statement is denied because the interview was not custodial. None of the factors typically considered by a court in determining custody, *see United States v. Hernandez*, 476 F.3d 791, 796 (9th Cir. 2007) (noting that "[r]elevant circumstances to

1 the custody analysis ‘include the language used by the officers, the physical characteristics of the
2 place where the question occurs, the degree of pressure applied to detain the individual, the
3 duration of the detention, and the extent to which the person was confronted with evidence of
4 guilt’”), weigh in favor of finding custodial status here. Defendant was at home at the time of the
5 interview and was not handcuffed, and there is no indication that his movement was restricted by,
6 e.g., blocking of any exits and any other verbal command. He was not isolated from others when
7 he was questioned. Nor were there any hallmarks of a police-dominated atmosphere. He was told
8 early on that he could consult with an attorney, an offer which he later took up.

9 The motion to suppress the fruits of the search is denied because there was probable cause
10 to believe evidence, instrumentalities, or fruits of a crime would be found in Defendant’s email
11 account which was the subject of the warrant. As the government points out, Paragraph 27 of the
12 October 2019 affidavit and the May 2019 affidavit establish that altered bills of lading were sent to
13 his email account, and there was direct communication between Defendant and Michael Choy
14 announcing Defendant’s new email address and referencing a wire, shipping instructions, and HTS
15 code 3906.90.20 PMMA/PS. The affidavit tied TPP export to the scheme (at Paragraph 26) and
16 Choy indicated in an interview his continued business dealings with Defendant. Even if the last
17 sentence of Paragraph 38 pertaining to Choy’s continued dealings with Defendant were
18 disregarded (as Defendant raised at the hearing a potential *Franks* challenge to that statement),
19 there is still probable cause that evidence of a crime would be found in the subject email account
20 of Defendant. As the Court stated at the hearing, the issue is not necessarily whether there was
21 probable cause of Defendant’s guilt but whether there was probable cause to believe that evidence
22 of a crime would be found in the email account. Moreover, the motion to suppress is further
23 denied because the enforcement officers in this case acted in objective and reasonable reliance on
24 the warrant issue by the magistrate judge under *United States v. Leon*, 468 U.S. 897 (1984). Nor
25 was the information underlying the warrant stale, given the record retention requirements. Finally,

26 ///

27 ///

28 ///

1 the warrant was not overbroad because it identified the items to be copied by law enforcement,
2 limiting them to fruits, contraband, evidence, and instrumentalities of the specific crimes
3 described. *See* Docket No. 95-4, at 25.

4 This order disposes of Docket Nos. 93, 94, and 95.

5
6 **IT IS SO ORDERED.**

7
8 Dated: November 22, 2021

9
10 

11 EDWARD M. CHEN
12 United States District Judge
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28